[ORIGINAL CIVIL JURISDICTION]

CHUNG THYE PHIN

vs.

LEWIS LAZARUS & SONS.

[PENANG SUIT No. 224 OF 1932]

Practice—action against a firm in England —no place of business in the Colony—partners outside the jurisdiction—service on local agents —authority terminated before action—Civil Procedure Code, Ss. 115 & 780.

If, at the time of accrual of cause of action, a foreign firm has no place of business within the Colony and none of its partners resides within the jurisdiction, such a firm cannot be sued although it employs a local agent.

Principles in Singleton v. Roberts & Co., 70 L.T. 687, Grant v. Anderson (1892) 1 Q.B. 108, and Okura & Co. v. Forsbacha Jernverks Aktiebolag, (1914) 1 K.B. 715 applied.

Service effected on a Company of local agents, who have lost personal control or management of their principals business as a result of the termination of their authority, must be set aside.

Application to set aside a Writ of Summons and service thereof and all subsequent proceedings in the action. The Writ was served on the 10th June 1932 on H. Dove, a Director of Huttenbach Lazarus & Sons, who had for some years past been the agents of the defendants in and about the purchase and shipping of tin on consignment. The defendants had no place of business within the jurisdiction. None of the partners of the defendant firm resided in the Colony. On the 7th June 1932 the Agents received cable information that their principals had lost membership of the London Metal Exchange. This information was circulated to the defendants' clients on the same day. By the 8th June the Bank with which the defendants had their accounts had withdrawn all facilities and the agents' authority to operate the defendants' accounts was revoked. From that date the agents ceased to do any business on the defendants' behalf.

Simpson, for the Plaintiff.

Hume, for the Defendants.

Cur. Ad. Vult.

PRICHARD, J. This is an application to set aside a Writ of Summons and the service thereof and an order of the 10th June, 1932, on the grounds that—

(i) the Defendants were wrongly sued in the firm name, and,

(ii) Messrs. Huttenbach, Lazarus & Sons Ltd. were not the Defendants agents at the time of the service.

It appeared that the Defendants had no place of business within the jurisdiction and that none of the partners resided here. They lived in England. The transactions were for the purchase of tin in London for settlement within three months and for the resale thereof. It was a matter of pure speculation: no tin actually passing. Provisional forms of contract were signed in Penang, the actual contracts being made out in London and sent out to the Straits Settlements, and on receipt here were forwarded to the Plaintiff and retained by him. On the 7th June, 1932, Messrs. Huttenbach Lazarus & Sons, Limited were notified telegraphically by the Defendants that they had lost their membership of the London Metal Exchange. The same day Messrs. Huttenbach Lazarus & Sons, Limited notified this loss of membership to Defendants' clients and they ceased to operate Defendants' accounts as they had been advised that their authority was terminated in view of their having notice of an act of bankruptcy.

Section 780 (1) of the Civil Procedure Code provides—

> 780—(1). Any two or more persons, claiming or being liable as co-partners, and carrying on business within the jurisdiction, may sue or be sued in the name of the respective firms, if any, of which such persons were co-partners at the time of the accruing of the cause of action.

There is a well-known rule that if a firm has no place of business in this country held in the name of the firm then they do not carry on business within the jurisdiction even though they employ an agent locally.

(Singleton v. Roberts & Co. 70 L.T. 687.

Grant v. Anderson (1892) 1 Q.B. 108.

Okura & Co. v. Forsbacha Jernverks Aktiebolag (1914) 1 K.B.715.)

Therefore, the Writ in this case has been improperly issued and must be set aside. The service of the Writ must equally be set aside.

Section 115 of the Civil Procedure Code provides—

> 115.—(1) In an action relating to any business or work against a person who does not reside within the Colony, or who is absent from the Colony, service of a writ of summons for service within the jurisdiction on any manager or agent, having at the time of service personally the control or management of such business or work for such person within the Colony, shall be deemed good service whether such person is a British subject or not.

In my opinion at the time of the service Messrs. Huttenbach Lazarus & Sons Limited had not personally the control or management of the Defendants' business. Further, I consider that they were quite justified in notifying the Defendants' clients that their authority had been terminated, as, if they had continued their agency with the knowledge that an act of bankruptcy had been committed by their principals, they might have found themselves in grave legal difficulties, in the event of an actual bankruptcy ensuing.

I am unable to see that the submission of the statement of the position referred to in Plaintiff's attorney's affidavit of the 17th June, in any way proves that on the 10th June 1932, when the writ was served, Messrs. Huttenbach Lazarus & Sons, Limited had the control or management of the Defendants' business within the Colony.

Costs to be Defendants.

Order accordingly.

Solicitors for the Plaintiff—

Presgrave & Matthews.

Solicitors for the Defendants—

Adams & Allan.

[APPELLATE CRIMINAL JURISDICTION]

REX

vs.

TAN THIAN CHAI & GNOH CHEE BAH.

[S'PORE MAGISTRATE'S APPEAL No. 25 OF 1932]

Procedure— Accused's plea through Counsel —whether valid.

An accused person should plead guilty or claim to be tried by his own mouth and not through his counsel or advocate.

Queen v. *Roopa Gowalla* 15 W.R. 42 followed.

In this case the accused were charged with voluntarily causing grevious hurt under Section 325 of the Penal Code.

On the 17th day of May when the case came up before Mr. G. C. Dodd the then Criminal District Judge the first accused pleaded "guilty" but the 2nd accused pleaded "not guilty" to the charge. The learned District Judge, not being satisfied that the first accused understood the charge, had it read over and explained to him a second time whereupon he also pleaded not guilty to the same.

On the 13th of July 1932 the case came up for trial before Mr. C. Wilson, the present Criminal District Judge.

The charge was read to the accused and before they could plead to it through their own mouths their counsel pleaded guilty on their behalf to a charge of assault whereupon the District Judge convicted and sentenced them to 6 months' rigorous imprisonment each without option of a fine.

The accused appealed to the Supreme Court on the ground that they never pleaded to the charge and that their counsel did not have any authority from them to plead guilty. They were not bound by their counsel's plea.

S. C. Goho, on behalf of the appellants, submitted that the accused must plead guilty or claim to be tried by his own mouth and not through his counsel or advocate.

W. B. O'Connor, on behalf of the respondent, agreed with the above view.

WHITLEY, J. agreed with the submission of counsel for the appellants and set aside the conviction and sentence and ordered the case to be tried *de novo* before another District Judge.